

CALIFORNIA ENERGY COMMISSION

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October 14, 2010

James D. Boyd, Presiding Member
Anthony Eggert, Associate Member
Carlsbad Siting Committee
California Energy Commission

Subject: Carlsbad AFC (Docket No. 07-AFC-6): (1) Recent Ninth Circuit Case Regarding Liquefied Natural Gas Use in California; (2) U.S. Environmental Protection Agency Determination Regarding Applicability of Prevention of Significant Deterioration Permit.

Briefing for the Carlsbad AFC concluded as of October 11, 2010. Staff wishes to call to the Committee's attention a very recent U.S. Ninth Circuit Court of Appeals case that is relevant to one of the issues in the Carlsbad proceeding. The case is so recent that Staff has only just discovered it, and could not include it in its brief.

An issue raised by Intervenor Center for Biological Diversity (CBD) is whether, in its FSA, Staff should have considered the allegedly higher greenhouse gas (GHG) contribution from liquefied natural gas (LNG) that could be imported through Mexico to California and burned in California power plants, and analyzed and quantified such increased impacts. Staff contended that such a consideration is not necessary because (1) natural gas supplies and the natural gas market have changed dramatically in the past three years, making the use of LNG imports much less likely than previously forecast, and making it *highly speculative* that LNG will be burned in Carlsbad, and (2) even if one assumes that LNG is burned in the proposed Carlsbad power plant in significant quantities, a more efficient power plant would be even more valuable in reducing GHG emissions, because it would reduce the consumption of that higher carbon fuel source.¹

The speculative nature of LNG imports and usage in California has been addressed in a very recent decision from the Ninth Circuit Court of Appeals: *South Coast Air Quality Management District v. FERC* (Sept. 9, 2010) ___ F.3d ___ No 08-72265 (2010 WL 3504649). In that case, the air district challenged the sufficiency of an environmental impact statement prepared by the Federal Energy Regulatory Commission. The court held that the environmental document was sufficient, one of the reasons being "the substantial uncertainty regarding the eventual burning of North Baja gas [LNG]." (Westlaw Star Page 13.) The court discussed this uncertainty in the following paragraph:

¹ This assumes, as CBD does, that imported LNG has significantly higher GHG emissions. Staff is agnostic on this assumption, and Applicant's witness testified at hearing that LNG imports do not have significantly higher GHG emissions.

The CPUC's observations have proven to be prophetic. Because of the recent discovery of huge natural gas reserves in the United States, which are already being tapped, today "[i]mport terminals for [liquefied natural gas] sit virtually empty, and the prospects that the U.S. will become even more dependent on foreign imports are receding." Amy Myers Jaffe, *Shale Oil Gas Will Rock the World*, Wall St. J., May 10, 2010. This is echoed in the circumstances depicted one year earlier. See, Ben Casselman, *U.S. Fields Go From Bust To Boom*, Wall St. J., April 30, 2009 at A1 ("Liquefied natural gas imports plunged [in 2008], leaving import terminals nearly idle.") (Westlaw Star Page 8, fn. omitted.)

In summing up its decision, the Court concluded that "there remains substantial uncertainty about the eventual burning of North Baja gas [LNG]." (Westlaw Star Page 13.) Staff brings this new decision to the attention of the Committee and the parties because it so directly bears on the very issue raised by CBD, and Staff's response that LNG use is unquantifiable, speculative, and beside the point.

The uncertainty surrounding future LNG imports is further addressed in Staff's Opening Brief. Although Staff believes that the record on this issue is more than sufficient, it is also docketing an Associated Press article regarding the recently discovered abundance in U. S. natural gas supplies and the remarkable effect this has had on the U.S. gas market. That article ("Natural Gas Elbows its Way to Center Stage," Associated Press, published in the *Sacramento Bee* on October 14, 2010) is attached and will be docketed today.

As a secondary matter, the U.S. Environmental Protection Agency (EPA) has recently determined that the Carlsbad Energy Center Project does not require a federal Prevention of Significant Deterioration permit (PSD); the EPA letter will be docketed later today. While this determination regarding a separate federal permit is, strictly speaking, of limited relevance to the issues before this agency, Staff alerts the Committee of this determination because the possible requirement of a PSD permit has been raised by some parties (incorrectly) as a pertinent consideration for the Energy Commission's state license.

Sincerely,

/s/ Richard Ratliff
RICHARD C. RATLIFF
Staff Counsel IV

Attachment

cc: Paul Kramer, Hearing Officer
Carlsbad POS list